

HOUSE BILL NO. 693
INTRODUCED BY SINRUD

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CHILD SUPPORT OBLIGATIONS DETERMINED PURSUANT TO ADMINISTRATIVE PROCEDURE ARE EFFECTIVE IMMEDIATELY UPON SERVICE OF A NOTICE OF FINANCIAL RESPONSIBILITY ON THE PARENT OR PARENTS AND THAT FINAL ORDERS ARE RETROACTIVE TO THAT DATE; PROVIDING THAT A NOTICE OF FINANCIAL RESPONSIBILITY MUST INCLUDE A STATEMENT REGARDING ITS IMMEDIATE EFFECTIVENESS; AMENDING SECTION 40-5-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility -- temporary and final support obligations -- administrative procedure. (1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. The support order must include a medical support order as required by 40-5-208.

(2) An action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child;

(c) that the monthly support obligation is effective on the date of service of the notice and may be collected during the proceeding that establishes the support obligation by any remedy available to the department for the enforcement of child support obligations;

~~(e)~~(d) that in addition to child support, the parent or parents may be ordered to provide for the child's medical support needs;

~~(d)~~(e) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

~~(e)~~(f) that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

~~(f)~~(g) that if a party does request a hearing, the other parties may refuse to participate in the proceedings and that the child support and medical support order will be determined using the information available to the department or provided at the hearing;

~~(g)~~(h) that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and

~~(h)~~(i) that the parties are entitled to a fair hearing under 40-5-226.

(3) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence, the department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court. The temporary support order must include a medical support order as required by 40-5-208.

(4) An action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs that the obligor incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

- (i) reconciled without the marriage having been dissolved;
- (ii) made joint application to the department to vacate the order or dismiss the proceeding; and
- (iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child was otherwise eligible for assistance; or

(b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for a hearing with the department:

(i) within 20 days from the date of service of a notice of financial responsibility; and

(ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon notice to the parties to the original order, substitute a support order made in accordance with the guidelines for the defaulted order.

(10) After establishment of an order under this section, the department may initiate a subsequent action on the original order to establish a support obligation for another child of the same parents.

(11) A child support and medical support order under subsection (1) is effective as of the date of service of a notice of financial responsibility on the parent or parents and may be collected by any remedy available to the department for the enforcement of child support obligations. A final order is retroactive to the date of service of the notice of financial responsibility as provided in this subsection, except that the final order may also determine child support for a prior period as provided in 40-5-226(3).

~~(11)~~(12) A child support and medical support order under subsection (1) continues until the child reaches

18 years of age or until the child's graduation from high school, whichever occurs later, but not later than the child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary order is superseded by a final order, judgment, or decree."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -